

New York

-77-

Attachment 4.19-0

Part I

for such facility at the time and place and under the circumstances proposed and that the continued operation of such facility would be jeopardized by a limitation of reimbursement pursuant to subdivision (e).

(4) A lease with a related organization described in subdivisions (a) or (d) of section 86-2.26 of this subpart shall be deemed to be a non-arms length lease.

(5) Any capital expenditures associated with non-arms length leases shall be approved and certified to, if required, under the hospital certificate of need process. In the computation of reimbursement for non-arms length leases, the capital cost shall be included in allowable costs only to the extent that it does not exceed the amount which the facility would have included in allowable costs if it had legal title to the asset (the cost of ownership), such as straight-line depreciation, insurance, and interest. Accelerated depreciation on these assets may not be included in allowable costs under any circumstances.

~~(6) If a facility enters into a sale and leaseback agreement with a nonrelated purchaser involving plant facilities or equipment, the incurred rental specified in the agreement shall be included in allowable costs if the following conditions are met:~~

~~(i) the rental charges are reasonable based on consideration of rental charges of comparable equipment and market conditions in the area;~~

93-44

92-4

9/8/98
OCT 23 1993

New York

77(a)

Attachment 4.19-D

Part I

~~the type, expected life, condition and value of the equipment rented and other provisions of the rental agreements;~~

~~(ii) adequate alternate equipment which would serve the purpose are not or were not available at lower cost; and~~

~~(iii) the leasing was based on economic and technical considerations.~~

~~(iv) If all these conditions were not met, the rental charge cannot exceed the amount which the provider would have included in reimbursable costs had he retained legal title to the equipment, such as interest, taxes, depreciation, insurance and maintenance costs.~~

~~(v) If a facility enters into a sale and leaseback agreement with a nonrelated purchaser involving land, the incurred rental cost for land shall not be included in allowable costs.~~

(d) The provisions of subdivision (e) of this section shall not apply to hospital-based residential health care facilities. Such facilities will be reimbursed pursuant to capital cost regulations in Subpart 86-1 of this part.

(e)(1) Subject to the provisions of subdivisions (c), (d) and (f) of this section, the capital cost component for every facility shall consist of the payment factors provided in this subdivision that, in any year of useful facility life, are applicable to the facility.

(2) Interest. The capital cost component shall, in each year of useful facility life, include a payment for factor sufficient to reimburse, at a rate which the commissioner finds to be reasonable under the circumstances prevailing at the time of the placing of the capital indebtedness, interest on capital indebtedness.

(3) Amortization. (i) Subject to the limitations of paragraph (5) of this subdivision, the capital cost component shall, in each year of useful facility.

TN 93-44

Approval D

9/8/98

SEP 8 1998

Subpart 86-1

92-4

Inactive Doc.

OCT 23 1998

New York
77(b)

OFFICIAL

86-2.21 (3/92)
Attachment 4.19-D
Part I

life, include a payment factor sufficient to reimburse the amortization component of capital indebtedness pursuant to the terms of the mortgage note or bond.

TN 92-4 Approval Date DEC 30 1991
Supersedes TN New Effective Date MAR 11 1992

OFFICIAL

NEW YORK
-78-

Attachment 4.19-D
Part I

(ii) The capital indebtedness of a facility, to the extent that the original principal of such debt does not exceed the initial allowed facility cost of the facility shall be recognized as follows:

(a) For capital indebtedness with an effective term of 10 years or less, amortization expense will be recognized for the purpose of reimbursement only, if the schedule of debt amortization is within the limitation set forth in section 86-2.21(e)(5) of this Subpart for each of the years of debt amortization.

(b) For capital indebtedness with an effective term in excess of 10 years, amortization expense will be recognized for the purpose of reimbursement upon a determination by the commissioner that the following standards are met:

(1) the debt is incurred for authorized purposes;

(2) the interest rate is reasonable for the time and place in which the capital indebtedness is committed, and for the type of indebtedness associated with the interest rate;

86-4
supersedes
82-30

Approval Date JUL. 29 1987 Effective Date JAN. 1 1986

OFFICIAL

NEW YORK
-79-

Attachment 4.19-D
Part I

(3) the amortization schedule is reasonable (amortization must be required in each year of the mortgage in accordance with the established financial practices);

(4) the effective term is consistent with customary commercial practices in the geographic area of the facility; and

(5) the effective term is in accordance with efficient production of services.

c) For capital indebtedness other than first mortgages, the amortization expense will be recognized for the purpose of reimbursement upon a determination by the commissioner that the debt, complies with the standards set forth in section 86-2.21(e)(3)(ii)(b) of this Subpart, and the following additional standards:

(1) they must be incurred for the purpose of financing either an approved purchase or construction of a facility; and

(2) the effective term of financing for a capital improvement is reasonable when compared to the estimated useful life of the improvement.

(d) Capital indebtedness for any unauthorized purpose will not be recognized for any reimbursement purpose.

86-4
superseded

Approval Date JUL. 29 1987 Effective Date JAN. 1 1988

OFFICIAL

NEW YORK
-80-

Attachment 4.19-0
Part I

(4) Return of equity. Subject to the limitations of paragraph (5) of this subdivision, the capital cost component shall include a payment factor sufficient to return equity. A facility shall be eligible for the return of equity commencing in the first year following the department's determination, among other factors, that the facility has the ability to meet current capital indebtedness (including principal and interest) over the balance of useful facility life. This shall mean that within the confines of the regulations expressed in this Subpart, capital reimbursement will be sufficient to provide for the remaining amortization of capital indebtedness. The commissioner's determination shall also take into account such factors as the age, size, location and condition of the facility, and the financial condition of the facility.

(5) Limitation. (i) Annual reimbursement payments for capital cost under paragraphs (3) and (4) of this subdivision shall not at any time result in a cumulative average payment in excess of three and three one-hundredths percent of initial allowed facility cost. For years prior to 1981, actual amortization or depreciation paid by Medicaid will be used in the computation of the limitation. For years prior to Medicaid or in years when Medicaid payments did not include an expense equivalent of depreciation or amortization, a three and three one-hundredths percent payment will be imputed.

86-4

supersedes

Effective Date JUL 29 1987

Effective Date

JAN. 1 1988

OFFICIAL

NEW YORK
-81-

Attachment 4.19-D
Part I~~2~~

(ii) This limitation may be waived by the commissioner where a facility applies to the commissioner for approval to finance an existing mortgage because its recognized amortization expense exceeds the amount of allowable reimbursement for amortization of principal and interest expense (including credit from prior amortization reimbursement). In those instances where the commissioner determines that it would be more expensive to reimburse the debt service that would be incurred if the facility refinanced the remaining principal, than it would be to continue to reimburse the debt service on the existing mortgage, the commissioner may reimburse up to the actual debt service incurred by the facility under the existing mortgage, plus return on equity in accordance with the provisions of paragraph (6) of this subdivision.

(6) Return on equity. The capital cost component for every facility shall include a payment factor sufficient to pay an annual rate of return on average equity, as such average annual equity shall be determined by the commissioner in each year of useful facility life.

(7) Residual reimbursement. After the expiration of useful facility life, the commissioner may approve a payment

86-4
supersedes
83-26

Approval Date JUL. 29 1987 Effective Date JAN. 1 1986

OFFICIAL

NEW YORK

-82-

Attachment 4.19-0

Part I

factor for any facility for which he determines that continued capital cost reimbursement is appropriate; provided, however, that such payment factor shall not exceed one half of the capital cost reimbursement received by such facility in the final year of useful facility life.

(8) Capital improvement cost reimbursement. (i) The capital improvement cost shall be reimbursed by adjusting the initial allowed facility cost, capital indebtedness, equity determinations and limitations as stated in paragraph (5) of this subdivision, to include the capital improvement cost.

(ii) Adjustments in accordance with subparagraph (i) of this paragraph shall be made in the following manner:

(a) if the cost of an improvement is \$100,000 or more, and certificate of need approval has been granted by the commissioner, then component useful life for the improvement will be permitted. Such component useful life will be equivalent to the estimated asset life in accordance with the *Medicare Provider Reimbursement Manual* or the remaining useful life of the facility, whichever is less. Where a capital improvement adjusts the expected useful life of the facility beyond the remaining portion of the original useful facility life, the limitation set

86-4

supersedes

83-26 & 82-30

Approval Date JUL. 29 1987

Effective Date

JAN. 1 1986

OFFICIAL

NEW YORK

-83-

Attachment 4.19-0

Part I ~~F~~

forth in section 86-2.21(e)(5) of this Subpart, will be increased to allow for the reimbursement of the amortization component of the debt obtained to finance the improvement.

(b) If the cost of an improvement is less than \$100,000, then the cost will be reimbursed over the remaining portion of the expected useful life. In such instances the reimbursement will commence with either the reporting of such costs on an annual certified cost report or, upon submission of a cost report, certified by an independent public accountant, whichever is submitted first. In either event, the reporting of such costs must be accompanied by a sworn statement by the administrator or the chief fiscal officer of the facility to the effect that the improvements made are not part of a number of planned related projects which, in the aggregate, total \$100,000 or more.

(c) If the cost of an improvement is less than \$100,000 and:

(1) is undertaken as the result of an emergency situation;

86-4
supersedes
82-30

Approval Date JUL. 29 1987 Effective Date JAN. 1 1986

OFFICIAL

NEW YORK
-84-

Attachment 4.19-0
Part I

(2) affects the health and safety of the patients; and

(3) the facility can demonstrate dire financial condition;

then the limitation set forth in section 86-2.21(e)(6) of this Subpart will be modified to allow for the reimbursement of the debt service associated with the financing of the approved capital improvement over the effective term of the obligation or five years, whichever is greater. Any contribution to the improvement by the facility and not financed by the debt obligation will be considered an equity contribution and an adjustment to the facility's total capital equity will be made.

(d) If a facility undertakes an authorized improvement without incurring additional debt, then the facility will receive a return on equity and, when a determination has been made in accordance with section 86-2.21(e)(4) of this Subpart, a return of equity, for the funds invested in the improvement.

(f)(1) With respect to facilities granted operating certificates prior to March 10, 1975, the commissioner may modify or

86-4

supersedes

82-30

Approval Date JUL. 29 1987 Effective Date JAN. 1 1986